TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [illegible] 1904.

No. 163, 40

ADOLFO SIXTO, PLAINTIFF IN ERROR,

vs.

LAUREANO SARRIA.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF PORTO RICO.

FILED MAY 19, 1903.

(18,938.)

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SUPREME COURT OF THE UNITED STATES.

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vs.

LAUREANO SARRIA.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF PORTO RICO.

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1 In the United States District Court for Porto Rico.

ADOLFO SIXTO
vs.
LAUREANO SARRIA. } Assumpsit. Damages, $14,000.00.

Adolfo Sixto, who is an alien and a subject of the King of Spain plaintiff, sues Laureano Sarria, who is a citizen of Porto Rico, in an action on the case on promises:

For that, whereas on the 27th day of November, A. D. 1892, the defendant was indebted to one Manuel Sixto, since deceased, in the full and just sum of sixteen thousand dollars, Spanish money, with interest from the 15th, day of May of the same year, which said sum the defendant had promised and agreed to pay to the said Manuel Sixto in four equal annual instalments falling due respectively on the 15th day of May of each and every year from the year 1893 to the year 1896 inclusive; and whereas the said Manuel Sixto departed this life, intestate, on the said 27th day of November, A. D. 1892, leaving two children, the plaintiff and one María Belen Sixto Melendez, as his sole heirs at law, and whereas the plaintiff then and there became and was entitled, as such heir at law of said Manuel Sixto, to one-half part of said indebtedness, of sixteen thousand dollars, Spanish money, so to become due from said defendant as aforesaid, with interest thereon, at the rate of eight (8) per centum per annum from said 15th day of May, 1892, until paid; the defendant being so indebted as aforesaid, then and there in consideration of the premises on the day and year first aforesaid promised and became bound to pay to the plaintiff the said one-half part of the sums aforesaid at the respective times when the same severally became due with interest thereon as aforesaid. Yet, although the several dates on which the said several sums or instalments respectively became due and payable have all long since passed and payment thereof has been demanded, the defendant has not paid to the plaintiff the said several amounts so due to him as aforesaid, nor any of them, nor any part thereof, and the same still remain due to the plaintiff.

And for that, whereas on the 1st day of September, A. D. 1902,
2 the defendant was indebted to the plaintiff, as heir at law of his father the said Manuel Sixto, in the sum of fourteen thousand dollars ($14,000.) for money before that time loaned by said Manuel Sixto deceased, to the defendant at his request; and in the like sum for money before that time received and retained by the defendant for the use of the plaintiff; and in the like sum for the price of lands and tenements before that time granted, conveyed and delivered to the defendant by the said Manuel Sixto in his lifetime, and in the like sum for interest upon money foreborne by the plaintiff to the defendant at his request for divers spaces of time before then elapsed: and, being so indebted as aforesaid, the

defendant then and there in consideration thereof promised the plaintiff to pay him upon request the said several sums of money in this count mentioned.

Yet, the defendant, not regarding his several promises and undertakings, has not paid the plaintiff the said several sums of money hereinbefore mentioned, or any or either of them, or any part thereof though often requested so to do, but to pay the same has wholly neglected and refused, and still does neglect and refuse. To the damage of the plaintiff in the sum of fourteen thousand dollars, and therefore he brings this suit.

(Signed) N. B. K. PETTINGILL,
Attorney for Plaintiff.

3 In the District Court of the United States for Porto Rico.

Present: Honorable Wm. H. Holt, judge.

OCTOBER 13TH, 1902.

Entry journal.

SISTO
vs.
SARRIA.

Appearance of Mr. Mott for defendant and demurrer filed.

(Same day last aforesaid.)

Entry journal.

SIXTO
vs.
SARRIA.

Motion filed.

In the District Court of the United States for Porto Rico.

Present: Hon. Wm. H. Holt, judge.

OCTOBER 22ND, 1902.

Entry journal.

SIXTO
vs.
SARRIA.

Demurrer argued and submitted.

In the District Court of the United States for Porto Rico.

Present: Hon. Wm. H. Holt, judge.

WEDNESDAY, *November 5th*, 1902.

Order in journal.

ADOLFO SIXTO
vs.
LAUREANO SARRIA.

The court hands down the fol-owing order and directs that it be filed and entered.

Order.

4 It is claimed the declaration of the plaintiff should aver a judicial declaration as heir *ab intestato*, that thus only has — the right of title. This is the ground of the demurrer. The plaintiff contends such declaration is not necessary to the right of the heir to sue, but even if so, it is a matter of evidence; need not be avered in the pleading; and that it is only necessary that he is the heir. A plaintiff must *be* his declaration show his right to sue.

It would seem that by the local procedure a judge may in his discretion make a judicial designation of heirship, *ab intestato*, or leave the parties to an ordinary action. Whatever this provision and various others relative thereto may mean it is averred that the plaintiff is the heir of the party to whom the debt was owing and as such heir, having become entitled to half of it, the defendant promissed to pay him. Under the local law the heir has the right to col-ect a debt coming to him by heirship from his ancestor. The averments of the declaration are to be taken as true upon demurrer and it is overruled.

Thereupon comes the defendant by his attorney T. D. Mott, Jr., Esq., and calls up his motion heretofore filed for rule compelling plaintiff to give surety for costs and plaintiff is given until November 6th, 1902 to file affidavit in opposition thereto.

In the District Court of the United States for Porto Rico.

Present: Hon. Wm. H. Holt, judge.

THURSDAY, *November 6th*, 1902.

Entry journal.

ADOLFO SIXTO
vs.
LAUREANO SARRIA.

Now comes the plaintiff herein and by his attorney N. B. K. Pettingill, files affidavit in opposition to defendant's motion for rule for

security for costs. Comes also the defendant by his attorney T. D. Mott, Jr., and files a motion for a bil- of particulars which said motion is granted and bill of particulars ordered to be filed.

5 In the District Court of the United States for Porto Rico.

Present: Hon. Wm. H. Holt, judge.

NOVEMBER 8TH, 1902.

ADOLFO SIXTO
vs.
LAUREANO SARRIA.

Now comes the plaintiff herein by his attorney N. B. K. Pettingill Esq., and files a bill of particulars in persuance of an order entered herein on November 6th, 1902.

Bill of Particulars.

In the U. S. District Court for Porto Rico.

Nov. 8, 1902.

ADOLFO SIXTO
vs.
LAUREANO SARRIA.

Now comes the plaintiff by h*si* attorney, N. B. K. Pettingill and in compliance with the order of the court furnishes the fol-owing bill of particulars of the claim made in plaintiff's declaration.

To one half of the purchase price of a farm in Vieques called "Monte Santo" embracing about 430 acres of land sold by Manuel Sixto, whose heir plaintiff is, to defendant by deed dated May 15th, 1892 executed before Leandro Lara y Torre, notary public.....	$6,400
To interest upon the above amount at the rate of $42 per month from said date May 15th, 1892 to date, compounding monthly as stipulated.....	8,150
	$14,550

N. B. K. PETTINGILL,
At'y for Plaintiff.

6 *Plea. Filed November 11th*, 1902.

In the District Court of the United States for Porto Rico.

ADOLFO SIXTO
vs.
LAUREANO SARRIA. } Plea.

And the defendant, Laureano Sarria, by T. D. Mott Jr., his attorney comes and defends the wrong and injury, when etc.,—and says, that he did not ptomise in manner and form as the plaintiff has above thereof complained against him; and of this he puts himself upon the county, etc.—

And for a further and second plea to the said declaration, the defendant says, that on the fifteenth day of May, righteen hundred and ninety-two, the defendant became indebted in the sum of sixteen thousand dollars (16,000) Mexican dollars, money then current in Porto Rico, to one Manuel Sixto; on account of the purchase price of a farm situated in the island of Vieques, district of Porto Rico, and called "Monte Santo," that on the said fifteenth day of May, eighteen hundred and ninety two, the defendant made and constituted a mortgage upon the said farm in favor of the said Sixto, as security for the payment of the aforesaid amount of sixteen thousand (16,000) Mexican dollars, together with a certain interest as stipulated in the said instrument of mortgage; that thereafter the said mortgage was duly registered in the registry of property of Humacao, Porto Rico, on the eleventh day of July, eighteen hundred and ninety two; that the payment of the aforesaid sum of sixteen thousand (16,000) Mexican dollars, as provided for in the said instrument of mortgage, was to be made in the manner
7 following:—to wit:—four thousand ($4,000) dollars on the fifteenth day of May, eighteen hundred and ninety-three, and four thousand (4,000) dollars on the fifteeth day of May, of the years eighteen hundred and ninety-four, eighteen hundred and ninety-five, and eighteen hundred and ninety-six. And the defendant further says that the aforesaid Manuel Sixto departed this life on the twenty-seventh day of November, eighteen hundred and ninety-two, before any of the instalments aforesaid had fallen due; that the said Sixto died interstate and soon after his death, to wit, in the year eighteen hundred and ninety-three, judicial proceedings touching and respecting the settlement and inheritance of the estate of the said Manuel Sixto, deceased, and which said proceedings are known in the law of Porto Rico as "proceedings *ab intestato*" were instituted in the court of first instance of Humacao, Porto Rico the said court being then and there a court of record and of general jurisdiction, and the said court in said proceedings by a decree dated the fifteenth day of June eighteen hundred and ninety three, ordered the said defendant to pay into and deposit with the said court all

sums of money then due by the said defendant to the said estate of the said Manuel Sixto, deceased, by virtue of the aforesaid mortgage, and the defendant thereupon and in ob-dience to the said order of the said court did on the twenty-second day of June, eighteen hundred and ninety three, consign and deposit with the said court and did place at the disposal of the same the sum of four thousand (4,000) pesos of the money then current in Porto Rico, and the further sum of eight hundred twenty-two and fifty-two hundreths (822.52) dollars of the same kind of money the first sum being the amount of the first instalment due May fifteenth, eighteen hundred and ninety-three, and the second sum being the interest due on the aforesaid mortgage credit up to the first of June, eighteen hundred and ninety-three. And the said decree of the said court was duly entered before the commencement of this action and still is in full force and effect.

And the defendant further says, as to the third instalment above mentioned, that by judgment of the supreme court of Porto Rico, then known as the "audiencia territorial" dated the eighteenth day of February, eighteen hundred and ninety six, rendered
8 and entered in certain foreclosure proceedings had before the said court on appeal from the court of first instance of Humacao, in which proceedings the defendant and one Antonio Roig y Torruellas *was* plaintiff-, and which said proceedings the said Roig, as owner of the third and fourth instalments of the mortgage before mentioned, sought to foreclose the same to the extent of the third instalment aforesaid together with certain interest, the defendant was found to be indebted to the said plaintiff, Roig, in the amount of the third instalment aforesaid together with the corresponding interest and was ordered to pay the amount of said indebtedness so found due by the said judgment, to the said Roig, within the period of thirty days thereof and the said judgment further provided for execution to issue upon the non-compliance with the terms thereof by the defendant. Said judgment was duly entered before the commencement of this suit and is still in full force and effect. And the said defendant thereupon and in compliance with the said judgment of the said court thereafter paid unto the said plaintiff, Roig, the amounts ordered to be paid by the said judgment,—to wit—the amount of the third instalment of the aforesaid mortgage, together with the corresponding interest. And all of this the defendant is ready to verify.

T. D. MOTT, JR.,
Attorney for Defendant.

UNITED STATES OF AMERICA, }
District of Porto Rico. }

Laureano Sarria, being first duly sworn, deposes and says that he is the defendant in the above entitled action, that the foregoing plea has been translated to him and he is acquainted with the contents thereof and that the facts therein mentioned are true.

L. SARRIA.

Subscribed and sworn to before me this 12th, day of November 1902.

RICARDO N-DAL, *Clerk*,
By FRANK ANTONSANTI, *Deputy*.

9 *Demurrer to Plea Filed.*

In the District Court of the United States for Porto Rico.

NOVEMBER 14TH, 1902.

ADOLFO SIXTO
vs.
LAUREANO SARIA. } Assumpsit.

Now comes the plaintiff and demurs to the second and third pleas herein pleaded in behalf of the defendant and says that the same are not sufficient in law, and for causes of demurrer assigns the following:

First. Because the matter- alleged in said pleas, even if true, do not constitute any legal or sufficient defence to plaintiff's cause of action or to the right to claim payment of the instalment referred to herein.

Second. Because said pleas set forth matters concerning an alleged suit or litigation between third parties and the defendant, to which neither the plaintiff nor any privy of his was a party, the result of which is not binding upon the plaintoff's rights.

N. B. K. PETTINGILL,
Attorney for Plaintiff.

I hereby certify that in my opinion the foregoing demurrer is well founded in law, and that the same is not interposed for delay.

N. B. K. PETTINGILL,
Attorney for Plaintiff.

In the District Court of the United States for Porto Rico.

Present: Hon. Wm. H. Holt, judge.

NOVEMBER 14TH, 1902.

Entry journal.

SIXTO
vs.
SARRIA. }

Now comes the plaintiff herein and files a demurrer to defendant's pleas which is overruled. (Demurrer above.)

10 In the District Court of the United States for Porto Rico.

Present: Hon. Wm. H. Holt, judge.

NOVEMBER 14TH.

Entry journal.

ADOLFO SIXTO
vs.
LAUREANO SARRIA.

Now comes the plaintiff herein by N. B. K. Pettingill Esq., his attorney, and files joinder of issue, whereupon said cause coming on regularly for trial, both sides answer ready. Thereupon H. A. Dawson, a member of the regular petit jury is by consent of the parties, excused from the panel in this case. Whereupon the marshal is directed to summon from among the bystanders seven good sober, upright men to serve on the panel in the case. Thereupon the marshal summons W. E. Durstine, E. Curtis, J. E. Turrull, Arturo Ponce de Leon, C. W. Pyke, H. K. Torrey, R. A. Bailey, and C. Goenaga. The jury is impaneled and sworn to try the case composed of the following named persons, to wit.

Silvestre Iglesias, N. Lopez Victoria, P. Van Fleet, J. Steinacher, S. O'Donnell, W. F. Gerwig, H. H. Allen, J. D. Pike, H. W. Ryder, W. E. Durstine, E. Curtis, and C. W. Pike, who hear all the evidence, for plaintiff and part of the evidence for defendant.

Joinder of Issue.

In the U. S. District Court for Porto Rico.

Filed Nov. 14th, 1902.

ADOLFO SIXTO
vs.
LAUREANO SARRIA. } Assumpsit.

Now comes the plaintiff and joins issue upon the pleas of the defendant.

N. B. K. PETTINGILL,
Att'y for Pl'ff.

11 *Additional Plea Filed by Defendant.*

In the District Court of the United States for Porto Rico.

NOVEMBER 15TH, 1902.

ADOLFO SIXTO
vs.
LAUREANO SARRAIA.

And the defendant as to the second installment aforesaid says that he has paid the same, together with the corresponding interest on the 4th day of April 1894, to one Belen Sixto who was then the second owner of said mortgage credit and who had previou*l*sy been declared heir *ab intestado* of the said Manuel Sixto, deceased, by the order and decree of the proper court to wit, the court of first instance of Humacao, respectively on the 21st and 23rd of the month of November 1893.

And as to the 3rd, and 4th instalments the defendant says that on the 11th day of September 1894 the aforesi*a*d Belen Sixto for a valuable consideration ceded and transferred the said two instalments to one Antonio Roig y Torruella, that thereupon the said transfer was duly recorded and the said two instalments appeared upon the record to be the property of the said Roig, and thereupon, to wit, on or about the 16th day of May 1896, the defendant paid the said Roig, the amount of said two instalments together with all interest due.

And all of this the defendant is ready to verify.

T. D. MOTT, JR.,
At'y for Defendant.

U. S. OF A.,
Dist. of P. R.

Laureano Sarria being duly sworn deposes and says that he is the defendant in the foregoing plea mentioned that the said plea has been translated to him and he is acquainted with -he contents and that the same is true.

L. SARRIA.

Subscribed and sworn to before me this 15th day of Nov. 1902.

RICARDO NADAL, *Clerk*,
By H. H. SCOVILLE, *Deputy*..

12 In the District Court of the United States for Porto Rico.

Present: Hon. Wm. H. Holt. judge.

NOVEMBER 17TH, 1902.

Entry journal.

ADOLFO SIXTO
vs.
LAUREANO SARRIA.

Resummed. The jury hears argument of counsel, charge of the court, retir-s and thereafter return into court the following verdict.

" We the jury find for the defendant.

P. VAN FLEET, *Foreman.*"

In the District Court of the United States for Porto Rico.

Present: Hon. Wm. H. Holt judge.

NOVEMBER 19TH, 1902.

Judgment.

ADOLFO SIXTO
vs.
LAUREANO SARRIA.

The above cause having come on regularly for trial the jury heretofore having rendered their verd-ct therein in favor of the defendant.

It is thereupon by virtue of the law and by reason of the premises aforesaid, ordered and adjudged and decreed that the said plaintiff Adolfo Sixto do take nothing by his said suit and that the defendant, the said Laureano Sarria do go hence without day, and *and* further that the said defendant do have and recover from the said plaintiff his costs herein laid out and expended to be taxed by the clerk for which execution may issue.

13 In the District Court of the United States for Porto Rico.

Present: Hon. Wm. H. Holt, judge.

NOVEMBER 19TH, 1902.

Order.

ADOLFO SIXTO
vs.
LAUREANO SARRIA.

The attorneys of the parties to the above action having heretofore signed and filed a stipulation that each of the parties to this cause

shall be at liberty to withdraw such original exhibits as were used and introduced by him as evidence at the trial hereof,

It is therefore hereby ordered that the said parties be and they hereby are permitted to withdraw said exhibits upon leaving the proper receipt with the clerk of the court.

In the District Court of the United States for Porto Rico.

Present: Hon. Wm. H. Holt, judge.

NOVEMBER 26TH, 1902.

Entry journal.

ADOLFO SIXTO
vs.
LAUREANO SARRIA.

Now comes the plaintiff herein by his attorney N. B. K. Pettingill Esq., and files his petition for a writ of error to the Supreme Court of the United States, Whereupon the court makes the following order and directs that it be filed and entered.

Order.

The plaintiff, Adolfo Sixto, having this day filed his petition for a writ of error from the decission and judgment thereon made herein to the honorable the Supreme Court of the United States, and also praying that an order be made enlarging the time for the preparing and presenting of his bill of exceptions to the rulings of the court herein, and said petition having this day been duly allowed:

Now therefore, it is ordered that said plaintiff be allowed a
14 period of ninety days for preparing and presenting to *hte* court his bill of exceptions in this cause, and that he do make and file with the clerk of this court a good and sufficient bond in the sum of one thousand dollars, to the effect that if the said plaintiff and plaintiff in error shall prosecute said writ of error to effect and answer all costs if he fails to make his plea good, then the said obligation to be void, else to remain in full force and virtue.

15 In the District Court of the United States for Porto Rico.

FEBRUARY 26TH, 1902.

Order Extending Time.

ADOLFO SIXTO
vs.
LAUREANO SARRIA.

A stipulation is filed herein and in conformity thereto it is ordered that plaintiff shall have an extension of fifteen days from this date for preparing and presenting his bill of exceptions.

In the District Court of the United States for Porto Rico.

Present: Hon. W. H. Holt, judge.

MARCH 23RD, 1902.

Order Extending Time.

ADOLFO SIXTO
vs.
LAUREANO SARRIA.

The parties filed stipulation herein and by consent the time for preparing and presenting plaintiff's bill of exceptions is extended until April 11th, 1903.

16 In the United States District Court for Porto Rico, October Term, A. D. 1902.

ADOLFO SIXTO
vs.
LAUREANO SARRIA. } Assignment of Errors.

Comes the plaintiff in the above entitled cause, by his attorney N. B. K. Pettingill, and assigns the following as the errors committed by the court aforesaid in the course of the trial and proceedings in said cause:

I.

The court erred in overruling the demurrer of plaintiff to the pleas filed therein by defendant on November 11, 1902.

II.

The court erred in allowing the defendant, during the trial of said cause and after the plaintiff had rested his case, on November 15, 1902, to file his additional plea and compel plaintiff to join issue thereon against the objections made by the plaintiff thereto.

III.

The court erred in allowing the defendant, as a witness in his own behalf, to testify against the objection of the plaintiff, with reference to the last two instalments of the debt which was the subject matter of the suit, as follows, to wit: "I was ordered by the audiencia territorial (highest court) to pay the same (meaning the instalments) to Roig."

IV.

The court erred in allowing the defendant to introduce in evidence against the objection of the plaintiff the certificate of the reg-

istrar of property as to the entries in said registry affecting
17 the title to a farm called "Monte Santo," a mortgage upon which had been given merely as security for the debt which was the subject matter of the suit.

V.

Because the court erred in charging the jury, against the objection and exception of the plaintiff, in the following language, to wit:

"On November 21st, 1893, after one of them (the instalments) had become due, one Belen Sixto was declared his heir. That was by a procedure peculiar to the Spanish courts but nevertheless legal; so, under the law being declared such heir, I say to you as matter of law, that gave her the right to collect the assets of the estate."

VI.

The court erred in charging the jury, against the objection and exception of the plaintiff, in the following language, to wit:

"On February 15, 1894, she having been declared the heir, the entry was made of that fact in the registry (of property). I say to you as a matter of law that that declaration of her heirship was without prejudice to the rights of third parties—and that meant that if any other person showed himself afterwards to be an heir he was entitled to a proper proportion of the estate, but so far as a collection of debts and so far as a proper attention to the assets were concerned and the control of them, she became entitled to attend to that."

VII.

The court arred in charging the jury, against the objection and exception of the plaintiff, in the following language, to wit:

"A suit was brought by Adolfo Sixto on April 4, 1894, against Belen Sixto in order to have his right also as an heir declared. The debtor for this purchase money, Sarria, had no notice of this suit until June 5, 1894, and that was after two payments had been made, Belen Sixto having had the right to collect them."

18 VIII.

The court erred in charging the jury, against the objection and exception of the plaintiff, in the language following, to wit:

"In this contentious suit by Adolfo Sixto against Belen this defendant Sarria was ordered on June 2, 1894, to pay into court whatever money he might be owing. That order was served on Sarria on June 5, 1894, and afterwards that court decided that Sixto, the plaintiff in this suit, was not entitled to attach this money. He obtained an appeal from that judgment, but not from that portion of it that cancelled the annotation made in the registry of deeds of the attachment of that fund. Subsequently, on Nov. 27, 1894, an appeal was allowed in the upper court from that portion of it, but no notice

was given as to Sarria, who was merely a garnishee in the suit, and who had received no notice not to pay over the money until the lower court decided whether he had the right to pay it over. Between the time the court decided the attachment and the time the appeal was allowed in the upper court, Belen Sixto assigned to Roig the third and fourth instalments. I say to you as a matter of law that there was nothing to hinder her from doing that at that time; she had in law the right to do it."

IX.

The court erred in refusing to charge the jury, upon the written request of the plaintiff, in the language or to the effect following, to wit:

"As the *ex parte* decree declaring Belen Sixto the heir of Manuel Sixto expressly saved the rights of third parties, that was notice to the defendant that any payment made to her was made at his peril as against the rights of other true heirs; and, as defendant was not required by any legal authority to pay the first two payments to Belen Sixto, and as the plaintiff is shown in truth to have been an equal heir with Belen Sixto, the plaintiff is entitled to recover one-half of those two payments."

X.

The court erred in refusing to charge the jury, upon the written request of the plaintiff, in the language or to the effect following, to wit:

"As it is shown by the uncontradicted evidence that the judge of the court of first instance of Humacao was entirely without authority or jurisdiction to issue his order on August 31, 1894, directing the registrar to make annotation on his books of said order, said order to the registrar was void and the annotation made by the registrar was void and the former annotation remained in force, which was notice to all the world including this defendant that the plaintiff had an interest in those payments such as might be declared by the court; and the court having afterwards decided that the
19 plaintiff here is entitled to a one-half interest in said estate, the plaintiff is now entitled to recover one-half of the last two payments, with interest."

Wherefore the said Adolfo Sixto, plaintiff in error, prays the honorable, the Supreme Court of the United States, to examine and correct the errors assigned, and for a reversal of the judgment of the district court of the United States for Porto Rico entered in the above-entitled cause.

N. B. K. PETTINGILL.
Attorney for Plaintiff and Plaintiff in Error.

20 ADOLFO SIXTO
vs.
LAUREANO SARRIA. } Assumpsit.

Bill of Exceptions.

Be it remembered that at a term of the United States district court for Porto Rico, held in the city of San Juan on the 13th day of October, A. D. 1902, a cause therein pending, wherein Adolfo Sixto was plaintiff and Laureano Sarria was defendant, came on to be heard before the Honorable William H. Holt, judge of said court, at which time came the said parties by their respective attorneys, N. B. K. Pettingill Esq. for the plaintiff and T. D. Mott Jr. Esq. for the defendant; and thereupon the said issues in manner aforesaid joined between the said parties came on to be tried, and the jurors of the jury aforesaid, whereof mention is within made, being called, likewise came and were sworn to try the said issues upon the merits of said cause in manner aforesaid joined.

And thereupon the plaintiff, to maintain the issues upon his part, being duly sworn as a witness in his own behalf, testified as follows:

My name is Adolfo Sixto. I am the son of Manu*e*l Sixto y Andino, who lived in Vieques and died in November, 1892. I have lived in the island of St. Thomas for twenty years or more up to within a few weeks past. I am now living in San Juan and intend bringing my family here very shortly.

I know the defendant Laureano Sarria and have known him nearly ever since I have lived in St. Thomas. While I was in the employ of the firm of Fechtenberg & Co. of St. Thomas, I went several times to Vieques to buy cattle for them as well as on other business and had business dealings with the defendant. He
21 used to keep a store and I often slept in his store with his clerks and have eaten at his table, and he knew I was the son of Manuel Sixto. My father recognized me and treated me as his son during my visits there, I went to see him at his plantation and it was generally known in Vieques that I was his son. I do not remember any particular occasion when my father spoke of me as his son in the presence of the defendant, nor when the defendant spoke to me of being the son of Manuel Sixto, but I am sure he knew of the relationship and on that account gave me a preference in business dealings.

Vieques is a small island having not more than five or six thousand inhabitants in all. My father also had a natural daughter named Maria Belen Sixto y Melendez who lived in Vieques and, I think, still lives there. I was, of course, acquainted with her and after my father's death I received a letter from her telling me of his death. She also came over to St. Thomas to see me. I have never

received any part of the amount owed by Sarria to the estate of my father.

And further to maintain the issues on his part, plaintiff produced and read in evidence without objection a deed of conveyance from said Manuel Sixto y Andino to the defendant for a certain plantation called "Monte Santo," reserving a mortgage lien for purchase money, a true translation of the material parts of which conveyance from the Spanish into the English language is in words and figures following, to wit:

"In the town and island of Vieques, on the 15th of May, 1892, before me Leandro Lara y Tome, notary of this locality and of the district of Humacao, belonging to the territorial college of San Juan, Porto Rico, residing in this town, there appeared of the first part Manuel Sixto y Andino, sixty-two years of age, widower and property owner; and of the second part Laureano Sarria y Gonzalez, forty-five years of age, married, merchant and property owner; * * *

The appearing parties, with whom I am acquainted, I consider in my judgment to have the necessary legal capacity for the execution of this deed of purchase and sale of country properties; and they therefore state: 1st, Manuel Sixto y Andino, that he owns entirely the following country properties (describing four properties and giving the derivation of title).

Mr. Manuel Sixto sells the farm 'Monte Santo' as described and conveys the same in full ownership to Mr. Laureano Sarria for the sum of sixteen thousand pesos, current money, which sum is
22 to be paid by the purchaser to the seller in four instalments in the following way: Four thousand pesos on the 15th of May, 1893, as first instalment, and four thousand pesos more on each day of the same month of the following years, '94, '95 and '96, which are the three remaining instalments.

The contracting parties agree that the sixteen thousand pesos, current money, total amount of the sale of the farm "Monte Santo," shall draw interest of one hundred and forty pesos per month, current money, which Mr. Sarria shall have to pay to the seller, Mr. Manuel Sixto, in his domicile punctually at the end of each month; which interest shall *de* reduced in the proportion corresponding to that fixed for the sixteen thousand pesos as the said instalments are paid, that is to say, on the payment of the first instalment one-quarter part of the one hundred and forty pesos of interest shall be extinguished; the half of this sum when the payment of the second instalment is effected; three-quarters when the third instalment is paid; and the total sum on the payment of the fourth and last instalment.

Likewise the appearing parties state that they have agreed that the purchaser, Mr. Sarria, is to guarantee the payment of the sixteen thousand pesos, current money, the amount of this sale, as well as the payment of the interest as agreed, with a first mortgage on the total area of the aforesaid farm "Monte Santo."

Mr. Laureano Sarria solemnly accepts this sale in the form proposed by Mr. Manuel Sixto and ratifies the obligation made for the payment of the sixteen thousand pesos, current money, total amount of the farm "Monte Santo," and the interest as stated in the foregoing clauses * * *"

(At the end is the attestation clause, the signatures of the parties and the notary with witnesses, followed by a certificate of registration.)

And thereupon, further to maintain the issues on his part, plaintiff produced as a witness WILLIAM KOERBER who, being duly sworn, testified as follows:

I am a member of the firm of Muellenhoff & Koerber, who carry on, among other things, a banking and commission business which keeps us at all times acquainted with the value of money in circulation in the Island of Porto Rico including Vieques. We were in business during the year 1892 and before, and in that year during the whole of the month of May the value of the Mexican peso was 80 cents in gold, said peso being then the circulating medium in ordinary use.

And thereupon, further to maintain the issues on his part, plaintiff produced as a witness RAMON FALCON who, being duly sworn, testified as follows:

I am secretary of the district court of San Juan, Porto Rico, and as such secretary have in my custody all the records of said court.

I now produce the true and complete record of that court in
23 a cause instituted in the court of first instance of Humacao by the plaintiff Adolfo Sixto to establish his rights as heir of Manuel Sixty y Andino. The district court of which I am secretary is now the custodian of all the records of the old courts of the island.

And thereupon said record was introduced in evidence by the plaintiff without objection, certain parts of which were translated and read to the jury on behalf of plaintiff and other parts referred to without reading. Among other things, there appears from said record the following:

On November 20, 1893, the plaintiff, Adolfo Sixto presented to court of first instance of Humacao his petition of voluntary jurisdiction (expediente de jurisdiccion voluntaria) to be declared heir of Manuel Sixto y Andino, which was received by the court.

On November 21, 1893, Belen Sixto appeared in said court, by her procurador, and filed her opposition to the declaration asked for, stating that she had already in the same court been declared heir of said Manuel Sixto, and requesting that said application be denied in the form presented and said petition or expediente be declared a contentious proceeding (expediente contensioso).

On November 25, 1893, the opposition of Belen Sixto to the proceeding of voluntary jurisdiction was sustained and the suit declared

a "contentious proceeding," "the interested parties and the object of the suit to remain in the same situation as when it was begun."

An appeal was taken from this decision but was afterward abandoned and on April 4, 1894, Adolfo Sixto filed in that court his complaint in the "contentious proceeding," making Belen Sixto a defendant, praying the court to declare him an equal heir with her in the estate of said Manuel Sixto, and further praying that, for the better security of his rights, the court issue an order to the registrar of property requiring him to make a cautionary entry (ano-
24 tacion preventiva) in the registry touching the property affected by the suit, and also an order to Laureano Sarria, the present defendant, requiring him to retain at the disposition of that court whatever sums he was indebted to the estate of said Manuel Sixto.

On June 2, 1894, the court granted plaintiff's prayer for the cautionary notice to the registrar and for the order to be issued to Sarria. The notice to said Sarria was served on June 5, 1894, and a true translation of same with the *the* certificate of service is as follows:

I, Romulo Villahermosa y Borao, judge of the first instance of the city of Humacao and its district, to the municipal judge of Vieques, hereby state:—That in the suit of higher amount begun by Procurador José Calixto Bajandas in the name of Mr. Adolfo Sixto against Doña Belen of the same surname, in order that the latter may recognize him as an intestate heir of Mr. Manuel Sixto, as his natural recognized son, the following, amongst other things, has been decreed:—

Decree.

HUMACAO, *June 2nd*, 1894.

And as regards the supplemental petition (otro si) an order in duplicate be issued to the registrar of property of this district regarding the subject in question; and as regards the second point of said supplemental petition, let Mr. Laureano Sarria be notified in order that he may deposit in this court the amounts which he owes to the estate of Mr. Manuel Sixto Andino within the stipulated instalments, which shall be deposited in the royal treasury until the decision of this matter; therefore, a communication must be sent to the municipal judge at Vieques.

It was ordered and signed by his honor, of which I do certify.

(S'g'd) VILLAHERMOSA.

Before me:
JOSÉ GABL. GONZALEZ.

Therefore, and in order that the above decree may have due effect, I issue you these presents with due authority, notifying Mr. Laureano Sarria as ordered; and this done kindly return same with results.

Given at Humacao on June 4, 1894.

(S'g'd) VILLAHERMOSA.

(Seal of Court.)

(S'g'd) JOSÉ *BABL.* GONZALEZ, *Scrivener.*

Notification.—On June 5th, 1894, I appeared at the residence of Mr. Laureano Sarria and, he being present, I notified him by reading and handing a true copy of that part of the foregoing letter-order which interests him, and after the notification I demanded him as ordered to deposit in the court of first instance of the district the amounts which he owes to the estate of Manuel Sixto Andino as per stipulated instalments and which will be deposited in the royal treasury. He was thus notified and signed the same, of which I hereby certify.

(S'g'd) L. SARRIA.
(S'g'd) JUSTIZ.

The notice to the registrar was also delivered to him on June 5, and his return, dated June 12, 1894, shows the cautionary entries to have been made, of which return a true translation is as follows:

"The annotations ordered in the foregoing judicial orders have been entered at volume 23 of the archive 3rd of the municipality of Vieques at folios 4, 64 turned and 66 turned, properties No. 94, 11 and 112, annotations A, C, and A respectively; and at volume 40 of the archive 6th of the above mentioned municipality, folio 217 turned, property No. 292, annotaction A.

Humacao, June 12/94.

[Seal of Registry.]

(S'g'd) FELICIANO PIÑOL.

On June 6, 1894, notice of the same order of June 2 was also given to the defendant, Belen Sixto.

On June 26, 1894, Belen Sixto answered the complaint and, as a part of said answer, prayed that the cautionary notices entered on the registry be ordered cancelled and the interlocutory decree of June 2nd be vacated and declared null.

On August 30, 1894, the court granted these prayers of the answer by making an order vacating the notice sent to Sarria and to the registrar of property and declaring null the cautionary entries made under the decree of June 2nd, and ordered due notice thereof sent to the registrar. The procurador of plaintiff was notified of this order on the next day, August 31st, and on September 3, 1894, filed his petition for an appeal with both effects from said order; which petition was presented to the judge on the next day, September 4th,

and was allowed by him on September 6, 1894, for one effect only (en un solo efecto), a true translation of said order of allowance being as follows:

"HUMACAO, *September* 6, 1894.

The above petition was presented in due time and form; a copy of same shall be delivered to the other side; and after reviewing article 68 of the mortgage law in force, the appeal interposed on the part of Mr. Adolfo Sixto from the decision dated August 30th last is allowed for one effect only. And in order that he may be able to apply to the most excellent audiencia (higher court) in order to better the appeal, the secretaries shall give him the corresponding certified copy, if he asks for same within the fifth day, indicating what particulars it must contain.

It was ordered and signed by the judge, of which we certify.

(S'g'd) VILLAHERMOSA.
(S'g'd) ANTONIO AGUILAR.
J. MARIANO REYES."

On August 31, 1894, notices of the order of August 30th were issued by the court directed to Sarria and to the registrar of
26 property, which notices were served—on the registrar September 1st and on Sarria September 15th, and the order of cancellation of the cautionary entries was noted on the registrar's books on September 3rd, of the same year.

The appeal allowed as above on September 6, 1894, was duly perfected and on November 17, 1894, the audiencia (supreme court), in considering the application of appellant for enlarging the appeal to both effects, held that such allowance had been wrongfully denied by the court below and ordered that said appeal be considered as having been taken for both effects.

Thereafter on December 22nd, 1894, plaintiff applied to the audiencia for a further notification to said Sarria regarding the validity of his obligation under the decree of June 2nd, which application was granted and the court of first instance ordered to transmit the same. In pursuance of this, said last mentioned court proceeded to effectuate the same by sending a copy thereof to the municipal judge of Vieques for service, a true translation of which with the service of the same is as follows:

"To the municipal judge of Vieques:

The procurador, José Calixto Bajandas, has presented in this court a communication from the office of the secretary of civil bench of the audiencia territorial, the contents of which and the decision rendered thereon are as follows:

Communication.—In the record number 58 pertaining to the suit of higher amount carried on in this court by Mr. Adolfo Sixto against Doña Belen Sixto y Melendez on the subject that he be declared intestate heir of Mr. Manuel Sixto y Andino, he being his natural recognized son, and to a petition presented by the representative of

Mr. Adolfo Sixto, the court has decreed as follows: 'As to the principal part of the above petition, enter the appearance of the procurador, José Palacios, in the name of whom he appears, and let an abstract of the suit be made. As to the supplementary petition, that which was ordered in the decree appealed from regarding Mr. Laureano Sarria is hereby set aside, leaving in force the requisition ordered and directed to said Sarria on June 2nd by the judge of first instance, until the resolution of the pending appeal. Wherefore have an order issued and directed to the said judge inserting therein what may be pertinent from this decree in order that he may notify the said Mr. Sarria, making the return as soon as possible. And as regards that part of the petition concerning the cancellation of the cautionary entry, the same is out of place.' It was thus decided by the judges of the court and, with the scroll
27 of the presiding judge, I hereby certify.

(S'g'd) MARIANO PEREZ. [SCROLL.]

I hereby notify you of the above by order of the court for its execution, expecting that you will remit me the corresponding certificate.

May God preserve your life many years.

Porto Rico, January 5, 1895.

MARIANO PEREZ.

To the judge of the first instance of Humacao:

Order.

HUMACAO, *January* 7, 1895.

The above order from the office of the secretary of civil bench of the audiencia territorial was received; have the said superior order complied with, recorded and executed; and have a communication sent to the municipal judge of Vieques embodying the said order and this decree for the notification of Mr. Laureano Sarria referred to. It was decreed and signed by the substitute municipal judge, acting as judge of the first instance, before us—of which we hereby certify.

(S'g'd) LUIS G. TORO.
(S'g'd) ANTONIO AGUILAR.
(S'g'd) J. MARIANO REYES.

I hereby communicate the above to you in order that you may give notice of the contents thereof to Mr. Laureano Sarria, returning these presents with the service thereon.

May God keep your life many years.

Humacao, January 7, 1895.

(S'g'd) LUIS G. TORO. [SEAL OF COURT.]

Notification to Mr. Laureano Sarria.

On the 8th day of January, 1895, I appeared at the residence of Mr. Laureano Sarria and, he being present, I notified him of the full contents of the aforesaid superior order, reading same to him and delivering to him a true copy thereof. He signed these presents of which I hereby certify.

(S'g'd) L. SARRIA.
(S'g'd) JUSTIZ.

Appearance of Mr. Laureano Sarria.

On the 8th day of January, '95, here appeared Mr. Laureano Sarria and stated that, as can be seen by the above return, he has been notified of the order made by superior authority, but for the reason of not understanding its contents or knowing what to expect he respectfully requests that a clear and detailed specification be given him as to what he is to comply with. He so stated and signed together with the judge, of which I hereby certify.

(S'g'd) L. SARRIA.
(S'g'd) C. S. BLANCO.
(S'g'd) FR'CO JUSTIZ."

Upon the transmission of this notification and return thereon to the audiencia, plaintiff requested from that court a further order making clear to Mr. Sarria that which he did not understand and, in compliance with that request, the audiencia ordered an explanatory communication to be sent, a true translation of which with the accompanying communication of the court of first instance is as follows:

"To the municipal judge of Vieques:

This court has received a communication from the office of the secretary of the civil bench of the audiencia territorial, the contents of which and of the decision rendered thereon are as follows:

Communication.—In the records of the suit of higher amount carried on in this court by Mr. Adolfo Sixto against Doña Belen Sixto on the subject that he be recognized as intestate heir of his father, Mr. Manuel Sixto a petition has been presented by the procurador Palacios as attorney in fact of the former, which first supplementary petition and the decree rendered thereon are as follows:

28

'*First Supplementary Petition.*—I hereby present, duly returned, the order which was issued to Humacao to notify Mr. Laureano Sarria of Vieques of the contents of the decree of December 22nd. As it appears by these proceedings, Mr. Sarria asks that the order be made clear to him so as to know the details exactly of what he must comply with. In requisitions of such importance as

that it is well that Mr. Sarria be well informed as to what he is ordered to do. I request the court to direct that the said proceedings be added to the records and that with the same a new explanatory order be directed to Mr. Laureano Sarria, informing him that said requisition means the ratification of the one previously directed to him by the court in order that the sums which he owed from that time to Mr. Manuel Sixto should not be delivered by him except to the court in order to deposit same in the royal treasury. Justice.'

Order.

PORTO RICO, *January* 25, 1895.

As to the principal part of the foregoing petition, have the records made up as prayed for. Regarding the first supplementary petition, be it done as requested; have the necessary order issued to the judge with the necessary transcription. As to the second supplementary petition, it is declared that this court is open to Doña Belen Sixto in which the subsequent proceedings and notifications to be made shall be considered as well as the record which is also ordered. It was thus declared by the judges and rubricated by the presiding judge, of which I hereby certify.

Before me, the secretary,

[RUBRIC.] (S'g'd) MARIANO PEREZ.

I notify you of the above by order of the court for its execution, expecting due acknowledgment thereof, attaching hereto also the proceedings referred to above wherein appears the requisition made upon Mr. Sarria. May God keep your life many years.

Porto Rico, January 29, 1895.

MARIANO PEREZ.

Order.

HUMACAO, *February* 5, 1895.

The foregoing order from the office of the secretary of the civil bench of the audiencia territorial with the proceedings referred to therein was duly received. Have the said superior order complied with, recorded and executed; and together with that order as well as this have a communication sent to the municipal judge of Vieques for the notification of Mr. Laureano Sarria.

It was decreed and signed by the substitute municipal judge, acting as judge of first instance, before us, of which we hereby certify.

(S'g'd) LUIS G. TORO.
(S'g'd) ANTONIO AGUILAR.
(S'g'd) J. MARIANO REYES.

I hereby communicate to you the above in order that you may give notice of the contents thereof to Mr. Laureano Sarria, explain-

ing to him that the requisition referred to in the attached communication is a ratification of that one made to him on the 2nd of June, until the pending appeal is decided, and making due return hereon.

God preserve your life many years.

Humacao, February 5, 1895.

(S'g'd) LUIS G. TORO.

Notification to Mr. Laureano Sarria.

On the 8th of February, 1895, I appeared at the residence of Mr. Laureano Sarria and, he being present, I notified him of the full contents of the aforesaid superior order, explaining to him that the requisition referred to in the attached communication is a ratification of the one made on him on the 2nd of June, until the pending appeal is decided. He thus informed himself and signed, of which I hereby certify.

(S'g'd) L. SARRIA.

(S'g'd) JUSTIZ.

29 On November 29, 1895, the audiencia (supreme court) rendered its decision on the merits of the appeal, reversing and declaring null the order of August 30, 1894, and declaring valid and final the order of June 2, 1894, a true translation of which decision is as follows:

"PORTO RICO, *November* 29, 1895.

It appears that procurador José C. Bajandas in the name and representation of Mr. Adolfo Sixto, and with sufficient power, applied to the court of first instance of Humacao requesting that the latter be declared an heir to his natural father, Mr. Manuel Sixto, whose will made by cedulas had been declared null and void, accompanying said application with the power of attorney, the certificate of the recorded death of said Manuel Sixto, as well as another certificate as to the acknowledgment in favor of the applying party, and offering public information in order to justify the right which he claims. And, the record having been commenced, the same was declared contentious, as Doña Belen Sixto, who had previously been declared heir of the deceased Sixto, made opposition to said application.

It appears that in this state of affairs Adolfo Sixto commenced a suit of higher amount based on the facts and foundations of law as per his petition of the 4th of April, 1894, requesting in a supplemental petition that an order be issued to the registrar of property for the cautionary annotation of the suit and that Mr. Laureano Sarria be notified, as he holds moneys belonging to the estate of Mr. Manuel Sixto, in order that he should retain same in his possession until he should be judically ordered to whom he should deliver same; and, the suit having been admitted, by decree of June 2nd,

1894, it was ordered that the notification requested be granted and Mr. Sarria was instructed to pay into court the above mentioned amounts with the view of depositing same in the royal treasury until the resolution of the matter.

It appears that, the cautionary entry having been made as well as the notification which was ordered, in this state of the case and after due summons on the sixth of the same month the procurador, Mr. Tomas Carreras, appeared and answered the suit in the name of Doña Belen Sixto under the facts and foundations of the petition of July 26th of said year, presented on the same day, requesting in a supplemental petition that the cautionary entry be declared without effect, basing the petition on the lack of property of the plaintiff, also that no order was given for the attachment and disposal of the property and the plaintiff not having promised to indemnify the irreparable damages which the defendant might suffer in case the decision should be in her favor; which petition was declared out of place by decree of July 28th.

It appears that against this decree the representative of Doña Belen filed a petition for re-hearing, asking that the suit be brought back to its original state, on the 18th of August following; and after the request was notified to the other side who requested that it be declared out of place because, amongst other reasons, the defendant had allowed the legal time to elapse within which she could have presented such petition, as she could have requested when she answered the suit that said annotation be declared without effect, the petition filed was, by order of August 30th, declared to be received in due time, and the above mentioned annotation was annulled; and therefore the judicial order of June 2nd was reformed not only as regards said annotation, which was declared null and void, but also as regards the notification to Mr. Laureano Sarria, regarding which no asking was made.

It appears that from this decision plaintiff filed an appeal, protesting against the execution of the order because it was not in full force and effect, and, it having been admitted for one effect only, a certified copy was issued and sent to this higher court, Mr. José Palacios appearing therein as procurador in the name of the appealing party for the bettering of said appeal, and it having been admitted and for both effects of the case, the original records were brought up and, at the request of the appealing party, the notification to Mr. Laureano Sarria was declared in force and, the formalities of law having been carried out, a day was fixed for trial, which took place with the appearance of lawyer Manuel F. Rossy and procurador José Palacios, the first named informing the court what he thought pertinent to the rights of his client.

Considering that the notification of the suit having been made on the 6th of June to the defendant and having considered her as a party to the suit on the 16th of the same month, she did not plead against the decision until the 26th of July and therefore allowed the five days fixed by article 375 of the Law of Civil Procedure to elapse without asking that the case be carried back to its original state in

so far as the cautionary annotation and the notification to Sarria was concerned.

Considering that therefore the judge should not have accepted the petition for re-hearing as the decision was final and in force and effect and, as a result, the acceptance is null and void in law for that reason.

Considering that not only said illegality was committed but also that a petition for the reconsideration of a reconsideration was admitted and acted upon, as no other name can be given to the petitions of the defendant.

Considering, furthermore, that the judge of his own volition by his order of August 30th reformed his decision of June 2nd in that part which ordered the notification to Sarria, and which had not been asked for—and therefore this shows another illegality.

After reviewing the above cited articles the decree appealed from is hereby revoked, and therefore the decision of June 2nd is declared in full force and effect whereby the cautionary annotation was ordered as well as the notification to Sarria, without making any special decision as to costs. Have the records sent back to the judge with a certified copy of this opinion; said judge, Romulo Villahermosa, being careful to proceed in future in accordance with the law."

31 This decision was transmitted to the court below January 11, 1896, and on March 23, 1896, the procurador of plaintiff requested the court to notify both the registrar of property and Mr. Sarria that the audiencia had declared the order of June 2, 1894, still in full force and effect. Notice was accordingly issued to Sarria on April 10th and served on him May 4th, 1896; to which a reply was made by said Sarria on the same day, a true translation of which reply is as follows:

"On May 4, '96, appeared Mr. Laureano Sarria y Gonzalez and stated: that, having received notice that the instalment of the mortgage has been transferred to Mr. Antonio Roig, who has recorded said transfer in the registry of property, and supposing that he will proceed to collect the same judicially as he did the previous instalment, he is unable to accept the notification and he will appear before the audiencia in the premises. He thus stated and signed with me, of which I hereby certify.

(S'g'd) L. SARRIA.
(S'g'd) JUSTIZ."

Notice was also issued to the registrar on April 10th and served on him April 11, 1896, to which a reply was made by him on April 13, 1896, a true translation of which reply is as follows:

"The above judicial order is not complied with for the following reasons, viz:

1st. Because subsequent to the cancellation of the annotations, which are directed should remain in force, the property as well as

the encumbrance thereon was transferred to third parties,—this being an irremediable defect. See art. 20 Mortgage Law.

2nd. Because in the present mortgage law in force there is no provision regarding the form of carrying into effect the transaction ordered above,—this being a remediable defect.

I keep on file a copy of this order, attaching same to the records of its class numbered 15.

At Humacao on the 13th of April, 1896

(S'g'd) FELICIANO PIÑOL,

[SEAL.] *Registrar of Property.*

On May 6, 1896, plaintiff asked for a further order to the registrar compelling the entry before ordered, which request was denied by order of May 16, 1896. On May 22 plaintiff requested a reconsideration of this order, which was denied on June 1, 1896.

32 Thereafter proofs were taken and the cause was submitted in the court below upon its merits, and a final decree in favor of the defendant and against the claim of the plaintiff, Adolfo Sixto, was rendered on December 15, 1896, from which plaintiff entered his appeal to the audiencia in due time on December 22, 1896. This appeal was admitted for both effects by an order dated the same day last aforesaid.

On the same day there was received in said court of first instance the decree of the audiencia, dated November 28, 1896, declaring the appeal from the orders of May 16th and June 1st, 1896, operative for both effects. On February 15, 1897, the audiencia declared the consolidation of all the appeals (accumulacion de apelaciones), ordering the suspension of further proceedings until their final decision thereon.

On September 29, 1899, a final decision upon the merits of the appeals was rendered by the appellate court (the name of which had been changed by military orders issued after the change to American sovereignty), a true translation of which decision is as follows:

"In the city of San Juan, Porto Rico, on the 29th day of September, 1899.—After reviewing the suit of higher amount brought in the now abolished court of first instance at Humacao by Mr. Adolfo Francisco Sixto, a merchant and resident of St. Thomas, represented by his procurafor, Jose C. Bajandas, and his counsel, Lawyer Manuel F. Rossy, against Doña Belen Sixto, of domestic occupation, who is herein represented by her procurador, Tomas Carreras, and her counsel, Lawyer Isidoro Soto Nusa, concerning recognition of natural affiliation and declaration of intestate heirship of the deceased, Mr. Manuel Sixto, which is pending in this court by reason of consolidated appeals brought by Mr. Adolfo Sixto against the order of June 1, 1896, which had denied to him a re-hearing upon the decision of the 16th of May previous, and the judgment of the 15th of December of the same year, which declared without merit the suit brought by Sixto, with costs against him;—accepting the foundation of facts of the said judgment, and

It appearing, that both parties were summoned by the lower court to appear and, at the request of Mr. Adolfo Sixto's representative, in this second instance an order was made under date of February 15, 1897, allowing the appeals consolidated as against the order and judgment mentioned; and the appealing party only being present, it was declared that the other party was in default and that both be summoned for final judgment, the public hearing taking place with the attendance of the lawyer of Mr. Adolfo Sixto; and in the carrying on of the proceeding the legal formalities being observed; the associate judge, Felipe Cuchi Arnau rendered the opinion of the court:—

Accepting the original findings from the first to the fifth
33 inclusive in the judgment appealed from, and further,

Considering (finding), that if the copy of the baptismal paper of Mr. Adolfo Sixto issued by the rector of the Cathedral Church of St. Thomas, duly authenticated by the consul of Spain in said island, should not be considered, under the decisions of the supreme court of Spain of July 23, 1858, June 28, 1864, and November 29, 1886, sufficient proof to establish that Mr. Adolfo Sixto is a legitimate son of Mr. Manuel Sixto and Doña Mathilde Batell, although there may be established by it that foundation of written proof corroborated by the seven witnesses whose names and testimony are recited in the fifteenth finding of facts; it is sufficient, in the judgment of this court, for the recognition of Mr. Adolfo Sixto as a natural son of Mr. Manuel of the same surname and of Doña Matilde Batell, under the decisions of the same supreme court of Spain of October 8, 1853, June 13, 1862, October 9, 1865, December 1, 1881, July 10, and September 10, 1886, and March 26, 1889;

Considering, that, the filiation of Mr. Adolfo Sixto as son of Mr. Manuel Sixto and Doñe Matilda Batell having been established, the law presumes that said parties were in a position or attitude to get married when they procreated and gave birth to their son, there being no proof to the contrary, according to the decision of the said supreme court of Spain of October 11, 1882 and May 11, 1887;

Considering, that, if the fact of the birth of Mr. Adolfo Sixto took place on St. Thomas before the promulgation in Porto Rico of the present civil code, the death of Mr. Manuel Sixto took place after the promulgation of said civil code; therefore the right of Mr. Adolfo Sixto to inherit from him must be regulated in accordance with article 939 of said code, as set forth in transitory rule 11 for the application of the same;

Considering, that, there being no legitimate ancestors or descendants of the deceased Manuel Sixto, his intestate property must be divided in equal parts between his two natural children, Belen Sixto Melendez and Adolfo Sixto Batell, as prescribed by said article 939 of the present Civil Code;

Considering, that in regard to the personality of Mr. Adolfo Sixto, he being the son of a Spanish father though born in Danish territory, this fact gives him the character of a Spanish subject before the courts governed by Spanish legislation, until something to the

contrary has been proven by some of the means of proof allowed by law;

Considering, that the recognition of the right which the appealing party has to enjoy the half of said inheritance carries with it the revocation of the order of June 1, 1896, which denied the petition for re-hearing of the decision of May 16 previous—which decision hindered the prior security of appellant's rights;

After having reviewed the legal provisions cited and article 371 of the Law of Civil Procedure, we decide

That we must reverse the order of June 1, 1896, and the judgment of December 15, 1896, and in their stead we declare that Mr. Adolfo Sixto, as natural son of Mr. Manuel Sixto, has the right to the intestate inheritance from his deceased father together with his sister, the defendant; and we impose upon her the costs of both instances.

We pronounce, order and sign the same.

(S'g'd) JUAN R. RAMOS.
ANGEL ACOSTA.
FELIPE CUCHI.

And it further appeared from said record that no appeal or other proceedings had been taken to vacate said last recited decree but that the same is still in force.

34 And further counsel for plaintiff read to the jury a letter from the aforesaid Belen Sixto to plaintiff, which formed a part of the record aforesaid, which letter truly translated is as follows:

VIEQUES, *November* 30, 1892.

Mr. Adolfo Sixto.

MY DEAR BROTHER: I address you this letter to let you know the death of our beloved father, who died on the 24th instant. His death was somewhat sudden, yet he did not forget us in his will as I have been told by the notary of this town. We are heirs to $760 and I request you to come over as soon as possible, as the notary told me that your presence was necessary in order to collect our money.

Your affectionate sister,

(S'g'd) BELEN SIXTO.

And thereupon plaintiff rested his case.

Whereupon the defendant, to maintain the issues on his part produced and offered in evidence another copy of the deed of conveyance from said Manuel Sixto to defendant for the purpose of showing the date on which the same was recorded in the registry of property and, as said deed already appears in evidence, it is agreed by counsel for the respective parties that the same was duly registered in the registry on June 13, 1892.

And the defendant, further to maintain the issues on his part, produced and read in evidence without objection a certified copy of the decree of the court of first instance of Humacao whereby

Belen Sixto was declared an heir of her natural father, Manuel Sixto, a true translation of which decree is as follows:

"In the town of Humacao, on the 21st day of November, 1893, the judge of first instance of this town and its district, Don Romulo Villahermosa y Borao, in view of the records,

(1.) It appears, that Don Manuel Sixto y Andino, native of Aguadilla, widower, with residence in the island of Vieques, died in said last mentioned place on the 26th day of November of the year last past, without having executed a will in legal form, for, although there were presented three cedulas with a petition that they be elevated to a public document, by final sentence it was declared that they could not be held as a testament of said party;

(2.) It appears, that said Don Manuel Sixto y Andino left no legitimate descendants nor ascendants and only one recognized natural daughter, named Doña Belen Sixto y Melendez, who has survived him;

35 (3.) It appears, that the aforesaid natural daughter, legally recognized, applied to this court under date of the 18th of the current month, making known the death of her natural father without a will and that she was the only legitimate heir, presenting the sacremental documents and those of the civil registry, and also credentials which prove her parentage with the deceased and the death of this last party, and she thereupon concludes by petitioning that she be declared heir *ab intestato* of the same;

(4.) It appears, that with proper summons of the district attorney there was received the proofs offered upon the matters aforesaid and there was communicated to him the record, and he has rendered his opinion in favor of the said declaration;

(1.) Considering, that the intestate succession belongs to the natural children, recognized, in default of legitimate descendants and ascendants, according to art. 939 of the Civil Code;

(2.) Considering, that in accordance with this legal disposition the estate of Don Manuel Sixto y Andino belongs to his natural recognized daughter, Doña Belen Sixto y Melendez, because he died without testamentary disposition, and it is proper therefore to make in favor of the same the declaration of heir *ab intestato* which she has petitioned.

Having in view the provisions of articles 978–80 of the Law of Civil Procedure; 939 and par. 1 of 912 of the Code, his honor, before me, the escribano, said: That he should declare and does declare heir *ab intestato* of Don Manuel Sixto y Andino his recognized natural daughter, Doña Belen Sixto y Melendez, without prejudice to third parties, ordering that there be given her a certificate of this declaration so that she may make use of her right. And by this, his decree, the said judge thus ordered, decreed and signed, to which I certify.

(Signed) ROMULO VILLAHERMOSA.

Before me,

CARMELO MARTINEZ.

And further to maintain the issues on his part the defendant produced another order in the same proceeding as the last, which was read in evidence without objection, a true translation of which is as follows:

"HUMACAO, *November* 25, 1893.

The actuary having informed the court day before yesterday, and the foregoing being presented with the accompanying documents, which the actuary shall rubricate, let it be added to its antecedents, of which also the court has been informed, and in conformity with the provisions of art. 1001 of the Law of Civil Procedure it is now ordered that there be delivered to the heir, Doña Belen Sixto y Melendez, all of the properties, books and papers which formed the body of the intestate estate of the deceased, Don Manu*e*l Sixto y Andino, and the administrator named, Don Rudolfo Diaz shall render her an accounting and the judicial intervention shall now be terminated, which said judicial intervention was had at the instance of said Doña Belen, and there shall be made the opportune delivery by the actuary of the amounts which are deposited in his keeping and which have been paid by Don Laureano Sarria on account of the interest.

To the supplementary clause that it be done as requested, the proper communication being made to the treasurer-general and delivery being made to the interested heir, with the corresponding receipt, and upon the receipt for the proceedings in these records which shall be therein extended. The judge so ordered and signed, to which I certify.

(S'g'd) VILLAHERMOSA.

Before me,

CARMELO MARTINEZ.

36 Whereupon, it being the second day of said trial and the 15th day of November, A. D. 1903, the defendant by his attorney tendered and asked leave to file an additional plea in said cause, to the filing and consideration of which plaintiff by his attorney objected on the grounds following, to wit: First, that said offer came too late after plaintiff had introduced all his evidence and rested his case; second, that defendant showed no reason or excuse why said plea had not been filed within the time allowed therefor by the rules and practice of the court nor any good cause appealing to the discretion of the court to allow the filing of the same; and, third, that said plea was defective, insufficient and demurrable for the same reasons set forth in the demurrer theretofore filed by plaintiff to the original plea of the defendant. But the said judge did then and there overrule said objections and allow said plea to be filed upon the conditions set forth in the corresponding record entry of this court, to which ruling the plaintiff by his attorney did then and there except.

37 And thereupon, further to maintain the issues on his part, the defendant was called and sworn as a witness in his own behalf and, after being so sworn, testified as follows:

My name is Laureano Sarria y Gonzalez. I live in Vieques and have lived there for many years. In 1892 I bought the estate called "Monte Santo" from Manuel Sixto, giving him a mortgage lien for sixteen thousand dollars of the then current money payable in instalments according to the terms of the deed already in evidence. I paid the interest monthly to Manuel Sixto up to the time of his death. The first instalment fell due in May, 1893, and I paid it to the court of first instance of Humacao according to its order, for which I obtained a receipt from the court. This is a copy of the receipt which is handed me.

Whereupon defendant introduced in evidence without objection said receipt, of which a true translation is as follows:

"Don Laureano Sarria y Gonzalez, resident and merchant of the island of Vieques, has deposited upon the table of this court the sum of four thousand pesos, current money, the amount of the first instalment due on the fifteenth of May last, of a certain mortgage credit which he has constituted in favor of Don Manuel Sixto y Andino upon the farm called 'Monte Santo,' situated in the barrio 'La Florida,' municipal district of Vieques. He has also deposited the sum of eight hundred twenty-two and fifty-two hundredths pesos of the same kind of money for interest due up to the last day of May last past, at the rate of one hundred forty pesos per month up to the fifteenth of said May, and at the rate of one hundred five pesos per month for the fifteenth to the last day of said month. He at the same time presented a receipt for one hundred forty pesos, signed by the aforesaid Don Manuel Sixto y Andino, dated the 26th day of November of the year last past, for the monthly sum due on the 30th of the said November; and the aforesaid deposit he makes in compliance with the order of this court of first instance, dated the 15th of the current month, and which decree was issued in the preliminary proceedings prosecuted by Doña Belen Sixto y Melendez as recognized natural daughter of the said Sixto y Andino touching and respecting the possession of the property left upon the death of the aforesaid Manuel Sixto y Andino, and a petition touching an allowance for necessaries; the said Mr. Sarria as well as the farm mortgaged thus being absolved of all responsibility touching and respecting the instalment and interest thus paid, he having made the deposit in the form of a check on the Spanish Bank of Porto Rico, payable to bearer, for the sum of forty-five hundred pesos, and for the sum of three hundred twenty-two and fifty-two hundredths in a bill or currency of the same bank for the sum of two hundred forty pesos, and the difference he paid in in

38 Mexican pesos.

Humacao, June 22, 1893.

(S'g'd) CARMELO MARTINEZ, *Secretary.*

(Countersigned)
VILLAHERMOSA. [SEAL OF COURT.]

(Witness continues:)

The second instalment, which was to fall due in May, 1894, I paid to Belen Sixto about the first of April, 1894, which payment was solemnized by a notarial act whereby the property mortgaged might be relieved from the lien of the two first instalments. I think this was made before the notary Leandro Lara. The paper now presented to me is a copy of this notarial act.

Whereupon said instrument was introduced in evidence by the defendant without objection, a true translation of the material parts of which is as follows:

"No. 28.

Partial Cancellation of Mortgage.

In the town and island of Vieques on the 4th day of April, 1894, before me, Don Leandro Lara Tomé, notary of this locality, district of Humacao, and of the illustrious territorial college of this province of San Juan de Puerto Rico, resident of this town, appear: on the one part, Doña Belen Sixto y Melendez, thirty years of age, single, pursuing the vocations peculiar to her sex, and resident of this town; and on the other part, Don Laureano Sarria y Gonzalez, forty-six years of age, married, merchant, also of this locality, * * *

I consider that the appearing parties, whom I know, have in my judgment the legal capacity necessary for the execution of this instrument of partial cancellation of a mortgage, and to that end, they say:

(1.) Doña Belen Sixto y Melendez says, that she takes part in this act in the capacity of "heir *ab intestato*" of her deceased natural father, Don Manuel Sixto y Andino, which she proves by a certificate of decree of declaration of heirship which she shows and is hereinafter inserted, and which is as follows:

(Here follows a copy of the decree of the court of first instance of Humacao, dated Nov. 21, 1893, which is already in evidence, supplemented by a certificate showing the same was inscribed in the registry of property on Feb'y 13, 1894.)

She also exhibits a certificate of the registrar of property of this district in which various properties are set forth, which on account of her title as such heir Doña Belen Sixto y Andino received, and among them appeared a mortgage credit described in words and figures as follows, to wit: (Here follows a description of the farm 'Monte Santo' together with a recital of the proceedings by which Belen Sixto had been declared heir of said Manuel Sixto and also a statement as follows: 'In virtue of this there was registered in favor of Doña Belen Sixto y Melendez the credit which for the sum of sixteen thousand pesos Don Manuel Sixto y Andino had upon the property of this number, without prejudice of third parties, and which she acquired by title of intestate inheritance.')

(2.) The form of payment of the aforesaid mortgage credit,
39 as appears from the document of its execution, is as follows: (Here follows the stipulation for payment as contained in the deed.)

(3.) That the instalment due on May 15, 1893, *i. e.* the first instalment, amounting, with part of the interest due and not paid, to the sum of 4,822.50 pesos was delivered by Don Laureano Sarria y Gonzalez upon the table of the court of first instance of this district on June 22nd of the aforesaid year, because at that time the inheritance was still inchoate as at that time there had not yet been made the declaration of heirship *ab intestato* of Don Manuel Sixto in favor of the executing party, Doña Belen Sixto since this was done on Nov. 21, of the aforesaid year—all of which appears from the certificate of the corresponding decree which has been above literally inserted. * * * Of all of which the Hon. Romulo Villahermosa y Borao, judge of the first instance of Humacao, in compliance with what is disposed in the decree dated June 15, 1893, in respect to actions pending in said court, executed a receipt and partial cancellation of mortgage for the aforesaid sum in favor of Don Laureano Sarria, dated June 23, 1893, before the notary Don Marcelino Estevanes of the aforesaid town of Humacao.

(4.) Posterior to the declaration of heirship *ab intestato* decreed by said court, it was ordered by said court that delivery be made to Doña Belen Sixto, as such heir of her natural father, Don Manuel Sixto, of the said sum of 4,822.50 pesos, which was then on deposit in the royal treasury by order of Judge Villahermosa, and she, the interested party, having taken the same in charge because she received the aforesaid sum to her satisfaction, is willing to partially cancel the corresponding mortgage.

(5.) That she has also agreed with Don Laureano Sarria that he shall pay her the second installment, about to fall due, with the corresponding interest up to the 15th of May next, which is the date upon which it falls due, and therefore they proceed to execute the present instrument of partial cancellation for the total sum of said two instalments with the interest, so that it may be done in the registry of property in the proper legal form as the obligation for further guaranty is found recorded in the same—in the form and manner which shall be set forth in the stipulations following to wit: (here follows the formal acknowledgment of the receipt by Doña Belen Sixto of the amount of the two instalments with interest, stating in detail the manner of the payments), all of which she affirms and ratifies after I, the notary, had warned her that by virtue of the aforesaid admission the farm "Monte Santo" which is found mortgaged, is freed of all responsibility on account of the aforesaid sums and the-r interest etc.

Second. The mortgage right which was imposed upon the farm "Monte Santo" as security for the payment of the first two instalments, amounting to the sum of 8,000 pesos with interest is now extinguished, and therefore the mortgage * * * is partially cancelled and the said mortgage is by the present instrument reduced

to the sum of 8,000 pesos with the corresponding interest, according to what appears etc.

* * * * * * *

(The instrument is signed by Belen Sixto and Sarria and the witnesses and has a certificate showing its record in the registry of property on April 5, 1894.)

(Witness continues)

40 The third instalment, together with some interest, I paid into the Humacao court, as there was then a suit pending between Adolfo Sixto and Belen Sixto. However, the latter had transferred the last two instalments to Antonio Roig and Roig sued me to foreclose the third instalment. I was ordered by the audiencia territorial (highest court) to pay the same to Roig.

The question to which the last preceding sentence was an answer was objected to by the attorney for the plaintiff on the ground that the subject inquired about was immaterial and irrelevant to the issues made in the case now before the court, and on the further ground that it was not shown that the plaintiff was a party to any such suit and, if not a party, he could not be bound or his rights affected by any decree or order made therein, which objection was overruled by the court and the answer of the witness allowed to be given to the jury, to which ruling of the court plaintiff, by his attorney, did then and there except.

After this order was entered I petitioned the Humacao court to permit me to withdraw the amount of the third instalment and interest paid into said court, which was granted by an order dated April 25th, 1896, a copy of which is attached to the record of the Humacao court in the suit of the present plaintiff against Belen Sixto, already introduced in evidence.

The fourth and last instalment I also paid to Roig as he appeared to be the record owner of the mortgage and in the suit to foreclose it was found by the court that I owed him the amounts of the last two instalments. This last payment was made by notarial act.

I have thus paid off this mortgage and my property stands today upon the record clear and free from all burdens.

Whereupon said defendant introduced in evidence without objection a copy of the notarial act last above referred to, a true
41 translation of the material parts of which is as follows:

"In the city of Humacao, on the 16th day of May, 1896, before me, Don Marcelino Estevenez Nauclares, notary etc., appear Don Antonio Roig y Torrellas, merchnat of this locality, and Don Laureano Sarria Gonzalez resident of Vieques. They manifest that they are both in the full enjoyment of their civil rights and free use and disposition of their properties, on account of which I consider that in my judgment they have the legal capacity for the execution of this instrument of total cancellation of mortgage, and in consequence thereof they freely say:

1st. (Describing the terms of the original mortgage.)

2nd. That Doña Belen Sixto, as heir *ab intestato* of D'n Manuel Sixto declared such by decree of the court of first instance of this district dated Nov. 21st, 1893, ceded to the appearing party, Señor Roig, the mortgage credit mentioned in the preceding clause to the extent of the last two instalments of four thousand pesos each, due on the 15th of Ma- of the years 1895 and 1896 with their interests, as results from the document of cession, No. 203, executed before me on Sept. 11, 1894, a first copy of which was duly recorded in the aforesaid registry etc.

3rd. That said mortgage has already been cancelled in regard to the first two instalments and the debtor, Señor Sarria, having duly satisfied unto the creditor, Señor Roig, the amount of the capital and interest of the last two instalments, of which said instalments this last named gentleman is at present sole owner by virtue of the cession above mentioned,—it is proper to proceed to cancel said mortgage with regard to the last two instalments, as, in fact, they do by means of this instrument, which they execute under the clauses following, to wit:

First. Señor Antonio Roig y Torrellas, as such assignee and actual owner of the mortgage credit set forth in clauses first and second in regard to the last two instalments of said mortgage of four thousand pesos each, due May 15th of the years 1895 and 1896, in this act and in my presence and that of the witnesses confesses having received to his satisfaction before this time and from the hands of the actual owner of the mortgaged property and debtor, Don Laureano Sarria, the eight thousand pesos, which is the amount of the capital corresponding to the aforesaid last two instalments, besides the interest agreed upon and due, in consideration of which sums and facts he executes in favor of Señor Sarria the most effectual letter of payment by means of this document.

Second. (Releasing the mortgage lien as to said last two instalments.)

* * * * * * *

I, the notary, have made to the contracting parties the following warnings: First that the receipt of the capital and interest of the aforesaid debt being confessed, as it is, the property which was incumbered remains free from all responsibility on account of the said debt, even though it be proven afterwards that the delivery of said capital and interest was not true in all or in part." * * *

Signed by the parties, witnesses and notary, and certified to have been registered in the registry of property on May 26, 1896.

(Witness continues:)

I do not know Adolfo Sixto. I never saw him to my knowledge until I saw him in court here. I knew Manuel Sixto since the year 1869 in Vieques. I never heard that Manuel Sixto had a
42 natural son, although it was a matter of general knowledge in Vieques that he had a natural daughter named Belen Sixto. I know the firm of Fechtenberg & Co. of St. Thomas and have had business dealings with them during the period between

the years 1872 and 1890. I knew several of the employees of said firm but never knew Adolfo Sixto and am sure that I never saw him when I called at the store or office of said firm. I never saw Adolfo Sixto in Vieques, have never conversed with him and he has never been at my house. It could not make any difference to me to whom I paid the mortgage debt so long as I had to pay it. I have since paid this money to the last penny to the persons whom the courts not only told me were the proper parties, but even ordered me to pay.

And thereafter, further to sustain the issues on his part the defendant offered in evidence a certificate of the registrar of property for the district of Humacao as to the entries in said registry affecting the title to said farm "Monte Santo," to which document the plaintiff, by his attorney, objected on the ground that said document was only secondary evidence of the matters therein certified, that it did not contain the full contents of the instruments registered but only a memorandum or extract of what in the registrar's opinion was the legal purport of such instruments, and that the instruments so recorded themselves, or proper copies thereof, are the best evidence of the transactions. But the judge did then and there overrule said objections and did allow said document to be introduced and read in evidence, to which ruling of the court, the plaintiff by his attorney did then and there except.

A true translation of the substance and material parts of said instrument is as follows:

"Francisco Porrata, substitute registrar of property of the city of Humacao and its district, I certify:

That at folio 213 of vol. 40 of the archive 6th of the ayuntamiento of Vieques there is found recorded in the name of Don Manuel Sixto y Andino the farm numbered 292, called "Monte Santo" (description following).

43 At folio 214 of vol. 6 aforesaid there is the following second inscription of the same farm (description following and reciting the mortgage from Manuel Sixto to Laureano Sarria with mortgage back for 16,000 pesos)

At folio 215 of aforesaid vol. 6 there is found the third inscription of the aforesaid farm (reciting the mortgage lien aforesaid)

At folio 216 of said vol. 6 there is found the fourth inscription of said farm, 292, a description of which is as follows: "Rustic property, farm named "Monte Santo," situated in the barrio La Florida, the extent, description, boundaries and circumstances concerning the same appear from the preceding inscription No. 1, and is the same as that made in the title now presented. It appears affected by a mortgage for 16,000 pesos current money in favor of Don Manuel Sixto y Andino, resident of Vieques as appears from the preceding inscription No. 3, and said Señor Sixto having died in the town of his residence on Nov. 27, 1892, without having executed a will in legal form, because three cedulas were declared not to be receivable as a will, Doña Belen Sixto, resident of Vieques, applied

to the court of first instance of this district so that, in accordance with the procedure established by sec. 2 of the Law of Civil Procedure, she be declared heir *ab intestato*, because said Señor Sixto did not leave any legitimate descendants or ascendants and she is the natural daughter, legally recognized, and therefore the only heir of said Señor. The proceedings established by the aforesaid section having been had, and upon the hearing and the conformity of the fiscal, Señor Don Romulo Villahermosa y Borao, judge of the first instance of this district, before the escribano of the court, Don Carmelo Martinez, issued a decree on Nov. 21, 1893, by which he declared to be heir *ab intestato* of Don Manuel Sixto his recognized natural daughter, Doña Belen Sixto, without prejudice to third parties. * * * In virtue of which I record in favor of Doña Belen Sixto the credit which for the sum of 16,000 pesos Don Manuel Sixto had upon the property of this number without prejudice to third parties, and which she acquires by title of intestate inheritance. All of the foregoing appears in the certificate of decree previously mentioned, etc. * * * Feb'y 13, 1894.

At folio 217 of said vol. 6 there is found the fifth inscription of the aforesaid property, No. 292, the description of which is as follows:

The mortgage credit which for the sum of 16,000 pesos and its interest, constituted by Don Laureano Sarria in favor of Don Manuel Sixto and to which the inscription preceding, No. 3, refers, remains and is partially cancelled, because Doña Belen Sixto * * * is the owner of the aforesaid credit, having acquired the same from her father as appears from inscription No. 4 preceding, has confessed and admitted to have received before the act of execution of the instrument which is the object of this inscription the sum of 4,822.50 pesos, which were on deposit in 'Arcos Reales' and which sum was delivered to her by order of the competent court and which sum constitutes the first instalment, besides the sum of 4,000 pesos which she receives at the time of the execution in the presence of the witnesses and the notary authorizing the aforesaid instrument from Don Laureano Sarria, and which two items correspond to the first two instalments of the constituted mortgage of 4,000 pesos each, besides the interest, and they agree that it be partially cancelled. In virtue of which the aforesaid credit of 16,000 pesos is reduced to 8,000 pesos. This appears from a first copy of an instrument of partial cancellation of mortgage in the town of Vieques on the 4th of the current month, which document has been presented in this registry on the fifth day of the current month. * * * April 26, 1894.

44 At the same folio, 217 and over, and on the same property, there is an annotation, letter "A," the literal contents of which are, as follows:

"Rustic property; farm named "Monte Santo," situated in the barrio of "La Florida," municipality of Vieques, the exetent, description, boundaries and other circumstances concerning the same appear from the preceding inscription, No. 1. It appears affected

by mortgage in the sum of sixteen thousand (16,000) pesos, current money, in favor of Dona Maria Belen Sixto y Melendez, as appears from the preceding inscription No. 4, which credit has been reduced to eight thousand (8,000) pesos, of the same money, as appears from the preceding inscription No. 5. In the declarative suit of greater import instituted by Don Adolfo Sixto, resident of St. Thomas, against Dona Belen Sixto y Melendez, resident of Vieques, so that she might recognize him heir *ab intestato* of Don Manuel Sixto y Andino and that the court declare him such heir, upon petition of the plaintiff there have been issued duplicate orders to this registry of property, on the fourth and ninth of the current month, by the judge of *firts* instance of this district, Don Romulo Villahermosa, before the escribano, Don Jose Gabriel Gonzalez, ordering the "preventive" annotation of the said suit on all of the properties which appear recorded in favor of Don Manuel Sixto y Andino or of Dona Maria Belen y Sixto Melendez and which this last acquired as heir of the former, with the object of securing the rights of the plaintiff, and it appearing that the mortgage credit that is a burden upon the property of this number is recorded in favor of Dona Belen Sixto y Melendez, I make the preventive annotation of said suit upon the aforesaid property in favor of Don Adolfo Sixto in order to respond to the consequences of the aforesaid suit. * * * June 12, 1894.

At folio 214 of volume 7 of Vieques, there is found the annotation letter "B," of the property 292, in duplicate, a literal description of which is, as follows: "The preventive annotation, letter "B," made at folio 217 and over, of volume 6 of this same ayuntamiento, in favor of Don Adolfo Sixto to respond to the consequences of the declarative suit for greater import instituted by the aforesaid Senor Sixto against Belen Sixto y Melendez so that he might be declared heir *ab intestato* of Don Manuel Sixto y Andino now remains totally cancelled, because upon petition of the defendant the judge of *firts* instance of this district, Don Romulo Villahermosa, has so disposed before the actuaries Don Antonio Aguilar and Don J. Mariano Reyes, in an order issued on the thirty-first of August, last, by virtue of the aforesaid declarative records of greater import, in which order there is inserted a decree issued on the thirtieth of the said month by the aforesaid judge, before the aforesaid actuaries, ordering said cancellation. * * * September 3, 1894.

At the same folio and volume there is found the sixth inscription of the said property, which is literally, as follows: (Reciting the cession of the mortgage for the balance of eight thousand (8,000) pesos to Don Antonio Roig.) * * * October 16, 1894.

In the same volume and property, at folio 215, is found the seventh inscription, a literal description of which is as follows:—"The mortgage credit of sixteen thousand (16,000) pesos, current Mexican money, and its interest, constituted by Don Laureano Sarria y Gonzalez in favor of Don Manuel Sixto y Andino, to which the preceding third inscription refers, remains totally cancelled, as Don Antonio Roig y Torrellas, married merchant, of age, and resident of this city, the owner of the aforesaid credit, having acquired it from Dona Maria Belen Sixto y Melendez, as appears from the

preceding inscription No. 6, has admitted having received the value of the same from Senor Sarria before the execution of the instrument which is the object of this inscription. In virtue of which there remains and is totally cancelled the aforesaid credit of sixteen thousand (16,000) pesos, current money. This appears from the first copy of an instrument of total cancellation of mortgage executed in this city on the sixteenth of the current month before the notary of the same, Don Marcelino Estevanez, which document has been presented in this registry on the sixteenth of May, according to entry number 934, folio 260, volume 7 of the day book. * * * May 26, 1896.

And thereupon further to maintain the issues on his part the defendant produced and read to the jury a document attached to the record of the suit already introduced in evidence by the plaintiff, a true translation of the material parts of which is as follows:

"I, the undersigned, legalized secretary of the court of first instance of this city, certify: That in the proceedings had at the instance of Don Laureano Sarria in regard to the consignation of the third mortgage instalment of those stipulated for in the instrument of purchase and sale, dated May 15, 1892, and executed in his favor by Don Manuel Sixto for the rustic property called "Monte Santo," situated in the barrio la Florida, municipality of Vieques, there has been decreed the following order:

HUMACAO, *April* 25, 1896.

(1.) Whereas on May 16, of the year last past Don Laureano Sarria, resident and property owner in the island of Vieques in this judicial district, appeared before the court showing that by instrument dated May 15, 1892, Don Manuel Sixto executed in his favor real and effective sale of four rustic properties situated in the barrio La Florida of the aforesaid municipality, grouped together and containing 413 cuerdas of land, named "Monte Santo," which contract was made for the consideration of 16,000 pesos, payable in four instalments of 4,000 pesos each on May 15 of each year from 1893 to 1896 inclusive * * * the said sums being guaranteed by first mortgage on said farm "Monte Santo," and the vendor obligating himself to execute the legal instruments of partial cancellation in favor of the purchaser according as the latter should pay and satisfy the instalments due for the purpose of recording said cancellations; that of said instalments he has paid those corresponding to the years 1893 and 1894 according to the record of the registry of property; that on the 15th of said month of Mam the instalment corresponding to that date fell due and he, in compliance with a superior order issued in the suit prosecuted against Doña Belen Sixto, heir *ab intestato* of Don Manuel Sixto, by Don Adolfo Sixto so that the former might recognize the latter as the natural son of said Don Manuel, having been notified in the month of January of last year to deposit or consign the instalments with this court, and because of the said superior order there was still unpaid

the interest due since said month of January, and that he had knowledge that the heir, Doña Belen Sixto, without any impediment appearing in the registry of property had ceded from the month of September previous the two remaining instalments, which cession was duly recorded in said registry—he, compl-ing with said superior order, deposited and consigned in the very act upon the table of the court the amount of said instalment due, 4,000 pesos besides the interest due and unpaid since Jauuary up to May 16th, the day of his appearance, amounting to 315 pesos;

46 (2.) Whereas the court thereupon held as having been consigned or deposited the sums aforesaid, amounting to 4,315 pesos ordering its entry in the royal treasury as a judicial deposit * * * and a certified copy of the proceedings having been forwarded to the most excellent audiencia of the territory, before which court the declarative records above mentioned were then pending, and another certified copy being delivered party, Sarria, all of which appears to have been complied with;

(3.) Whereas on May 25, 1895, Don Laureano Sarria presented a petition to the court asking that Don Antonio Roig be notified that the deposit had been made and that the latter execute the corresponding document of cancellation of mortgage in respect to the third instalment, or, should he refuse to do so, the aforesaid document be executed "*de officio*," in virtue of which petition it was ordered that notification be made as solicited and what was asked relative to the cancellation was denied as said sums were then deposited in the royal treasury and could not be delivered to any person until the matter was decided by the superior authority. * * *

(5.) Whereas on the 22nd day of the current month the aforesaid Sarria presented a new petition asking that there be ordered delivered to him the sums deposited in the royal treasury at the disposition of the court as there was no longer any doubt as to who was the real mortgage creditor with the right to receive the same corresponding to the third instalment of the mortgage made upon the farm "Monte Santo," as the said creditor was recognized as such by the most excellent audiencia when it ordered, as it did order, him, the said Sarria, to be summoned to pay in the foreclosure proceedings prosecuted by Don Antonio Roig against him, so that he could be able to satisfy unto this creditor the amount of the mortgage instalment which he claimed;—he alleging in favor of his petition that said instalment of the mortgage was so deposited by virtue of the summons made upon him by this court and by order of the superior court, and the object of said proceedings being to prevent the "sucesion" of Don Manuel Sixto, represented by his daughter Doña Belen Sixto, from receiving said sum in payment to the prejudice of Don Adolfo Sixto, who calls himself heir *ab intestato* of said Don Manuel, and all doubt having disappeared when Doña Belen alienated without legal impediment in the registry of property the said mortgage credit, or rather the two remaining instalments, in favor of Don Antonio Roig, because the latter is the only legitimate creditor having the right to receive the same, and because the said

Sarria owes nothing to said "sucesion," as he has not celebrated with it any act or contract from which may arise any obligation enforceable in a suit * * * and that it is, furthermore, legally impossible not to satisfy to the latter the amount of the instalment due and deposited as the creditor is known and certain, and as between said "sucesion" of said Señor Sixto and said Sarria there exists no juridical relation from which any rights might spring or which might give rise to the fulfillment of any civil obligation, he is not comprehended within the question touching the ownership of said sum with the prejudice to his interests as no one can, directly or indirectly, be compelled to the fulfilment of obligations which he has not contracted;

(6.) Whereas, having at sight the records of the declarative suit which Don Adolfo Sixto is prosecuting against Doña Belen Sixto and the records of the foreclosure suit prosecuted by Don Antonio Roig against Sarria, there appears from these last that by a document (reciting the cession by Doña Belen to Roig); and from the records of the declarative suit aforesaid there appears that Sarria was ordered in January, 1895, to retain in his keeping and at the disposition of the court all instalments which he might owe to the "sucesion" of Don Manuel Sixto;

47 (1.) Considering, that the deposit made by Don Laureano Sarria of the mortgage instalment springing from the purchase of the farm "Monte Santo," which was due on May 15, 1895, was not made in accordance with the conditions exacted by art. 1176 and those following of the Civil Code in force.

(2.) Considering, that according to the statements contained in the minutes of said consignation and in the document dated May 16, 1895, said Sarria had knowledge of the fact that by cession which the heir of Don Manuel Sixto had made in September, 1894, without any legal impediment, the said mortgage credit was then found to be recorded in favor of the third party, and because of which circumstance it is evident that when he was summoned in January, 1895, to retain at the disposition of the court the sums which he might owe on account of the instalments to the "sucesion" aforesaid, he at that time owed said "sucesion" nothing and consequently could not retain anything in his possession at the disposition of the court;

(3.) Considering, that in virtue of the foregoing reason advanced by Don Laureano Sarria in aid of his petition that the amounts deposited be returned to him are worthy of consideration and with greater reason since execution has been ordered against him on account of the instalment herein treated of at the instance of the legitimate creditor; and

(4.) Considering, that, as has been explained, the consignation has not been made in proper legal form, and therefore not accepted by the creditor, the debtor Sarria has a right to withdraw the said sums and his obligation remaining subsistent in accordance with what is set forth by art. 1180 of said Civil Code without there

being any legal reasons to deny what is asked for in his preceding petition—

Having seen the legal authorities already cited and the others applicable, the Hon. Angel Acosta, judge of first instance of this city and its district, before me, said; that he should order, and does order, that there be delivered to Don Laure*nao* Sarria the sum *od* 4315 pesos, which was deposited in this court on May 16 of last year * * * and also that a proper record be made in the records of the declarative suit which is being prosecuted in this court by Don Adolfo Sixto against Doña Belen Sixto already above mentioned, and let there be placed in said records by the proper actuary a certified copy of the present decree" (Signed and certified.)

And in compliance with what is ordered by the foregoing decree I insert these presents, which I sign at Humacao, April 28, 1896.

(S'g'd) FRANCO. SOCORRO."

Thereupon the defendant rested his case, and the plaintiff, having no more evidence which he desired to offer, also rested his case. And the foregoing constituted all the evidence given in said cause.

And the said parties having concluded and submitted their testimony in the several matters aforesaid, and having, by their respective counsel, submitted arguments to the jury, the said judge, before said jury retired to consider of their verdict, did then and there of his own motion charge and instruct the jury as follows:

48 And upon the conclusion of said charge of the judge, and before the jury retired from the bar, the plaintiff by his attorney did then and there except to the following paragraph of said charge, to wit:

"On November 21st, 1893, after one of them (the instalments) had become due, one Belen Sixto was declared his heir. That was by a procedure peculiar to the Spanish courts but nevertheless legal; so, under the law being declared such heir, I say to you as a matter of law, that gave her the right to collect the assets of the estate."

For the reason that the same was erroneous and misleading in not defining such right to be without prejudice to the rights of other heirs if such there were.

And the plaintiff by his attorney, before the jury retired from the bar, further excepted to the following paragraph of said charge, to wit:

"On February 15th, 1894, she having been declared the heir, the entry was made of that fact in the registry (of property). I say to you as a matter of law that that declaration of her heirship was without prejudice to the rights of third parties—and that meant that if any other person showed himself afterwards to be an heir he was entitled to a proper proportion of the estate, but so far as a collection of debts and so far as a proper attention to the assets were concerned and the control of them, she became entitled to attend to that."

For the reason that the same was erroneous and misleading in its definition of the effect of said declaration of heirship as affecting the

rights of the plaintiff and in giving the jury to understand that plaintiff's right was limited to a recovery of his proper proportion of said estate from the party so declared heir who had collected it.

And the plaintiff by his attorney, before the jury retired from the bar, further excepted to the following paragraph of said charge, to wit:

"A suit was brought by Adolfo Sixto on April 4, 1894, against Belen Sixto in order to have his right also as an heir declared. The debtor for this purchase money, Sarria, had no notice of this suit until June 5, 1894, and that was after two payments had been made, Belen Sixto having had the right to collect them."

For the reason that said charge was inconsistent with the evidence was erroneous in not charging defendant with liability if he
49 had actual knowledge in place of notice, and in stating that Belen Sixto had the right to collect these instalments in prejudice of the rights of plaintiff.

And the plaintiff by his attorney, before the jury retired from the bar, further excepted to the following paragraph of said charge, to-wit:

"In this contentious suit by Adolfo Sixto against Belen this defendant Sarria was ordered on June 2, 1894, to pay into court whatever money he might be owing. That order was served on Sarria on June 5, 1894 and afterwards that court decided that Sixto, the plaintiff in this suit, was not entitled to attach this money. He obtained an appeal from that judgment, but only from that portion of it that cancelled the annotation made in the registry of deeds of the attachment of that fund. Subsequently on Nov. 27, 1894, an appeal was allowed in the upper court from that portion of it, but no notice was given as to Sarria, who was merely a garnishee in the suit, and who had received no notice not to pay over the money until the lower court decided whether he had the right to pay it over. Between the time the court decided the attachment and the time the appeal was allowed in the upper court, Belen Sixto assigned to Roig the third and fourth instalments. I say to you as a matter of law that there was nothing to hinder her from doing that at that time; she had in law the right to do it."

For the reason that said instruction was confusing and misleading, was contrary to the undisputed evidence in the case, and was erroneous in its statement of law that there was nothing to hinder said assignment from Belen Sixto to Roig at the time it was made.

And the plaintiff did then and there, before the jury retired from the bar and before the said charge of the judge was delivered, pray the judge in writing to instruct the jury as follows:

"As the *ex parte* decree declaring Belen Sixto the heir of Manuel Sixto expressly saved the rights of third parties, that was notice to defendant that any payment made to her was made at his peril as against the rights of other true heirs; and, as defendant was not required by any legal authority to pay the first two payments to Belen Sixto, and as the plaintiff is shown in truth to have been an equal

heir with Belen Sixto, the plaintiff is entitled to recover one-half of those two payments."

But the said judge did then and there decide that said prayer should not be granted, and did then and there refuse to instruct said jury as requested; to which decision and refusal of said judge the plaintiff, by his attorney, did then and there except.

And the plaintiff did then and there by his attorney, be-
50 fore the jury retired from the bar and before said charge of the judge was delivered, further pray the judge in writing to instruct said jury as follows:

"As it is shown by the uncontradicted evidence that the judge of the court of first instance of Humacao was entirely without authority or jurisdiction to issue his order on August 31, 1894, directing the registrar to make annotation on his books of said order, said order to the registrar was void and the annotation made by the registrar was void and the former annotation remained in force, which was notice to all the world including this defendant that the plaintiff had an interest in those payments such as might be declared by the court; and the court having afterwards decided that the plaintiff here is entitled to a one-half interest in said estate, the plaintiff is now entitled to recover one-half of the last two payments, with interest."

But the said judge did then and there decide that said prayer should not be granted, and did then and there refuse to instruct said jury as requested; to which decision and refusal of said judge the plaintiff by his attorney did then and there except.

And the said jury, after having heard the evidence, the charge of the judge and the various matters aforesaid, retired to consider of their verdict, and thereafter returned into court a verdict for the defendant, as more fully appears in the record of said cause.

And forasmuch as the matters above set forth do not fully appear of record, the plaintiff tenders this his bill of exceptions and prays that the same may be signed by the judge of this court pursuant to law; which is done accordingly this 23rd day of Feb'y, A. D. 1903.

WM. H. HOLT, *Judge.*

51 In the United States District Court for Porto Rico, October Term, A. D. 1902.

ADOLFO SIXTO
vs.
LAUREANO SARRIA. } Assumpsit. No. 158.

Comes now the above named plaintiff, by his attorney N. B. K. Pettingill, and complains that in the record and proceedings had in said cause, and also in the rendition of the judgment in the above entitled cause in said United States district court for Porto Rico, at the October term thereof, A. D. 1902, against the said plaintiff on the 29" day of November, 1902, manifest error hath happened to the great damage of said plaintiff.

Wherefore the said plaintiff Adolfo Sixto prays for the allowance of a writ of error to the honorable, the Supreme Court of the United States, and for an order enlarging the time for the preparing and presenting of his bill of exceptions to the rulings of the said court herein, and for such other orders and process as may cause the same to be corrected by the said Supreme Court of the United States.

And petitioner will ever pray.

(Sig.) N. B. K. PETTINGILL,
Attorney for Plaintiff.

52 UNITED STATES OF AMERICA, } ss:
District of Porto Rico, }

The President of the United States to the honorable the judge of the United States district court for Porto Rico, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said United States district court for Porto Rico, before you, between Adolfo Sixto, plaintiff, and Laureano Sarria, defendant, manifest error hath happened, to the great damage of the said plaintiff, as by his complaint appears: we being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Seal United States District Court for the District of Porto Rico.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 26 day of November, in the year of our Lord one thousand nine hundred and two.

RICARDO NADAL,
Clerk U. S. District Court, District of Porto Rico,
By FRANK ANTONSANTI, *D. C.*

Allowed this 26th day of Nov., 1902.

WM. H. HOLT, *Judge.*

[Endorsed:] U. S. district ct. for P. R. Adolfo Sixto *vs.* Laureano Sarria. Writ of error.

53 UNITED STATES OF AMERICA, } ss:
District of Porto Rico, }

The President of the United States to the honorable the judge of the United States district court for Porto Rico, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in the said United States district court for Porto Rico, before you, between Adolfo Sixto, plaintiff, and Laureano Sarria, defendant, manifest error hath happened to the great damage of the said plaintiff, as by his complaint appears; we being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 26 day of November, in the year of our Lord one thousand nine hundred and two.

RICARDO NADAL,
Clerk U. S. District Court, District of Porto Rico,
By FRANK ANTONSANTI, *D. C.*

Allowed this 26th day of No-., 1902.
WM. H. HOLT, *Judge.*

Attest:
A true copy.
RICARDO NADAL, *Clerk,*
By H. H. SCOVILLE, *Deputy.*

[Endorsed:] 158 C. L. Adolfo Sixto *v.* Laureano Sarria. Certified copy of writ of error. Filed clerk's office, United States district court. Dec. 20 1902 Ricardo Nadal clerk of the court. By W. H. Scoville, dep.

53½ Form No. 282. ≠212.

Return on Service of Writ.

UNITED STATES OF AMERICA, } ss:
The District of Porto Rico, }

I hereby certify and return that I served the annexed writ on the therein-named Laureano Sarria by handing to and leaving a true

and correct copy thereof with Thos. D. Mott, Jr., attorney of record for Laureano Sarria personally at San Juan, P. R. in said district on the 22d day of December, A. D. 1902.

E. S. WILSON,
U. S. Marshal,
By H. S. HUBBARD, *Deputy.*

54 UNITED STATES OF AMERICA, *ss:*

To Laureano Sarria, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the United States district court for Porto Rico, wherein Adolfo Sixto is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 26th day of November, A. D. 1902, and in the one hundred and twenty-seventh year of the Independence of the United States of America.

WM. H. HOLT,
Judge U. S. District Court for Porto Rico.

[Endorsed:] U. S. district ct. for P. R. Adolfo Sixto *vs.* Laureano Sarria. Citation. Marshal's fees. 1 service, $2.00. Expenses, —.

55 Know all men by these presents, that we, Adolfo Sixto, as principal, and Robert H. Todd and A. L. Arpin as sureties, are held and firmly bound unto Laureano Sarria in the full and just sum of one thousand dollars ($1,000.) to be paid to said Laureano Sarrio, his heirs, executors, administrators or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals this 3rd day of February, A. D. 1903.

Whereas lately at a session of the United States district court for Porto Rico in a suit pending in said court between said Adolfo Sixto plaintiff and said Laureano Sarria, defendant, a final judgment was rendered against the said Adolfo Sixto on the 26 day of November, 1902, and said Adolfo Sixto having obtained the allowance of a writ of error and filed a copy thereof in the clerk's office of said court to reverse the judgment in the suit aforesaid, and a citation directed to the said Laureano Sarria, citing and admonishing him to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof.

Now, the condition of the above obligation is such, that if the said Adolfo Sixto shall prosecute said writ of error to effect and

answer all costs if he fails to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

ADOLFO SIXTO. [SEAL.]
R. H. TODD. [SEAL.]
A. L. ARPIN. [SEAL.]

56 UNITED STATES OF AMERICA, }
District of Porto Rico. }

Robert H. Todd and A. L. Arpin, being duly sworn, each for himself deposes and says that he is one of the parties who has signed the foregoing bond as surety for said Adolfo Sixto, and that he is worth in visible property within the district of Porto Rico subject to levy under execution more than the sum of one thousand dollars over and above all legal exemptions.

R. H. TODD.
A. L. ARPIN.

Sworn to and subscribed before me this 3 day of Feb'y, 1903.

RICARDO NADAL,
Clerk U. S. District Ct.,
By FRANK ANTONSANTI, *D. C.*

Approved by me this 3 day of February, 1903.

RICARDO NADAL, *Clerk.*

57 UNITED STATES OF AMERICA, }
District of Porto Rico, } *ss:*

I, Ricardo Nadal, clerk of the district court of the United States, within and for the district aforesaid, do hereby certify *that* the foregoing — typewritten pages, numbered from 1 to — inclusive to be a full and true and correct copy of the record and proceedings in the above and therein entitled cause as the same remains of record and on file in the office of the clerk of said court, and that the same constitutes the return to the annexed writ of error.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court, at San Juan, P. R., this 12th day of May, A. D. 19–3.

[Seal United States District Court for the District of Porto Rico.]

RICARDO NADAL,
Clerk U. S. District Court, P. R.,
By —— ——, *Deputy.*

[Endorsed:] No. 158. In the district court of the United States, for Porto Rico. Oct. term, 1902. Adolfo Sixto *versus* Laureano Sarria. Transcript.

Endorsed on cover: File No. 18,938. Porto Rico D. C. U. S. Term No. 287. Adolfo Sixto, plaintiff in error, *vs.* Laureano Sarria. Filed May 19", 1903.

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